

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 121

March 30, 1995, 4:02 p.m.
Page S-4882 Temp. Record

DISASTER SUPPLEMENTAL-RESCISSIONS/Salvage Timber Sales

SUBJECT: Emergency Supplemental Appropriations Disaster Assistance and Rescission Act . . . H.R. 1158. Murray amendment No. 429 to the Hatfield substitute amendment No. 420.

ACTION: MOTION TO TABLE AGREED TO, 48-46

SYNOPSIS: As introduced, H.R. 1158, the Emergency Supplemental Appropriations Disaster Assistance and Rescissions Act, will provide \$5.360 billion in emergency appropriations for disaster assistance, and will rescind \$17.188 billion for various Departments and agencies.

The Hatfield substitute amendment would strike the provisions of H.R. 1158 and insert in lieu thereof the text of S. 617, as reported, which would provide \$6.700 billion in disaster assistance (the amount requested by the President), would rescind \$13.286 billion for various Departments and agencies, and would provide for expedited salvage timber sales on Federal lands for fiscal years 1995 and 1996. Details on those salvage timber sales and other timber sales are as follows:

Definition: a salvage timber sale would be defined as a sale for which an important reason for entry includes the removal of disease- or insect-infested trees, dead, damaged, or downed trees, or trees affected by fire or imminently susceptible to fire or insect attack (this definition is the same as is currently used by the Forest Service);

- Exemptions: salvage operations would not apply in--(a) wilderness areas; (b) areas currently recommended for the wilderness designation; (c) any roadless area on Federal lands designated by Congress for wilderness study in Colorado or Montana; or (d) any area on Federal lands on which timber harvesting for any purpose is prohibited by statute;

- Sales documentation: to the extent the Federal agency preparing a sale considered appropriate and feasible, environmental and biological assessments under the National Environmental Policy Act and the Endangered Species Act would be made and would be considered sufficient to meet the requirements of all Federal environmental laws;

- Option 9 (the President's timber sales plan for the Pacific Northwest): sales under Option 9 would be expedited, and any such sales would be deemed to be in compliance with all applicable environmental laws;

(See other side)

| YEAS (48) | | | NAYS (46) | | | NOT VOTING (6) | |
|----------------------------|------------------------|------|--------------------------|--------------------------|---------------|-------------------------|----------------------|
| Republicans (47 or 92%) | Democrats (1 or 2%) | | Republicans (4 or 8%) | Democrats (42 or 98%) | | Republicans (3) | Democrats (3) |
| Abraham | Hutchison | Reid | Chafee | Akaka | Johnston | Faircloth- ² | Conrad- ² |
| Ashcroft | Inhofe | | Cohen | Baucus | Kennedy | Grams- ⁴ | Dorgan- ² |
| Bennett | Kempthorne | | Jeffords | Biden | Kerrey | Kassebaum- ⁴ | Graham- ² |
| Bond | Kyl | | Roth | Bingaman | Kerry | | |
| Brown | Lott | | | Boxer | Kohl | | |
| Burns | Lugar | | | Bradley | Lautenberg | | |
| Campbell | Mack | | | Breaux | Leahy | | |
| Coats | McCain | | | Bryan | Levin | | |
| Cochran | McConnell | | | Bumpers | Lieberman | | |
| Coverdell | Murkowski | | | Byrd | Mikulski | | |
| Craig | Nickles | | | Daschle | Moseley-Braun | | |
| D'Amato | Packwood | | | Dodd | Moynihan | | |
| DeWine | Pressler | | | Exon | Murray | | |
| Dole | Santorum | | | Feingold | Nunn | | |
| Domenici | Shelby | | | Feinstein | Pell | | |
| Frist | Simpson | | | Ford | Pryor | | |
| Gorton | Smith | | | Glenn | Robb | | |
| Gramm | Snowe | | | Harkin | Rockefeller | | |
| Grassley | Specter | | | Heflin | Sarbanes | | |
| Gregg | Stevens | | | Hollings | Simon | | |
| Hatch | Thomas | | | Inouye | Wellstone | | |
| Hatfield | Thompson | | | | | | |
| Helms | Thurmond | | | | | | |
| | Warner | | | | | | |

EXPLANATION OF ABSENCE:

1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:

AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

● Judicial review of salvage timber and Option 9 timber sales: preliminary injunctions and temporary restraining orders would be banned; a permanent injunction of a sale would be allowed if a trial on the merits found that the sale was arbitrary, capricious, or otherwise not in accordance with law; any challenge to a sale would be in the district of the sale; any challenge would occur within 15 days of the initial advertisement of the sale; a sale would not be awarded within 45 days of a challenge; a decision would have to be rendered within 45 days unless a constitutional issue were involved;

● Administrative review: no salvage timber or Option 9 sale under these procedures would be subject to administrative review; and

● Marbled Murrelet: section 318 timber sales from 1990 that have been delayed would proceed; if endangered species were nesting in areas for which sales have been made, new contracts for timber areas of equal value would be given.

The Murray amendment would strike the bill provisions providing for expedited timber sales on Federal lands, and would substitute in lieu thereof more restrictive provisions for such sales through fiscal year 1996, as follows:

● Definition: the term "salvage timber sale" would mean a timber sale in which each unit is composed of forest stands in which more than 50 percent of the trees have suffered severe insect infestation or have been significantly burned by forest fire, and for which agency experts determine a sale would be beneficial for forest health;

● Coverage: salvage timber sale contracts would be awarded on an expeditious basis on Forest Service and Bureau of Land Management lands, except for--(a) any unit of the National Wilderness System; (b) any roadless area under consideration for inclusion in the National Wilderness System; (c) any area administratively designated as roadless; (d) any area in which such a sale would be "inconsistent with agency standards" for late successional and riparian reserves; or (e) any area withdrawn by Congress for any conservation purpose;

● Sales documentation: agencies involved in preparing sale documents for salvage timber sales would be required to act expeditiously;

● Expedited procedures: the agency managing a proposed salvage sale would request the consulting agency for the required environmental documents within 7 days of considering a sale; the consulting agency would reply within 30 days, unless the managing agency failed to give it requested information; administrative appeals of decisions to sell salvage timber would be filed within 30 days, and those appeals would be decided within 30 days; civil challenges of decisions and appeals would be filed within 30 days; and no time limit would be placed on civil challenges;

● Option 9 (the President's timber sales plan for the Pacific Northwest): timber sales under Option 9 would be expedited consistent with applicable environmental laws; and

● Marbled murrelet: purchasers of timber who were barred from harvesting that timber after July 30, 1995 because of protections ordered for the marbled murrelet would be given new contracts for timber in areas in which those protections did not apply.

Debate was limited by unanimous consent. Following debate, Senator Gorton moved to table the Murray amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

The Murray amendment would do more than gut the Gorton amendment; it would make a horrendous situation worse. Forest Service mismanagement, counterproductive environmental laws, militant environmental activism, and years of successive drought led to cataclysmic forest fires on public lands in the West last year. Billions of board feet of timber burned and soil was damaged, leading to the danger of flooding and soil erosion as well as delaying the time it will take for the forests to recover. Billions of board feet more of dead and dying timber remain, damaged by both fire and insects, and even worse fires will likely result if it is not removed. The Murray amendment, which ostensibly would hasten the process of removal, would actually slow it down.

As recently as 6 years ago, there was a booming, successful forest products industry in rural towns all up and down the north Pacific coast of the United States. In region 6, encompassing Washington, Oregon, and Northern California, 5 billion board feet of timber was being harvested. During that period of maximum harvests, more board feet of new timber was growing than was being harvested. This self-sustaining, thriving industry provided tens of thousands of well-paying jobs, and provided a steady, low-cost supply of lumber, paper, and other wood products for all Americans.

This situation changed with the listing of the spotted owl as an endangered species. This listing signalled the start of an eco-fanatic war on timber harvesting on public lands. Environmental extremists across the country suddenly became aware that trees were being harvested on federally owned lands in the West and Alaska, and they were incensed. Every timber sale became the subject of numerous administrative and judicial appeals, many of which were filed as class projects under the tutelage of liberal college professors thousands of miles from the forests. With a grab bag of environmental laws passed at different times with different goals and different requirements, it was easy for extremists to stall timber harvests indefinitely, because complying with one law often led to the violation of another law. The result of this litigation was a virtual halt to timber harvesting, not only in the Pacific Northwest but all over the United States. Tens of thousands of former loggers from timber-dependent communities are now on welfare. Even their homes are worthless, because they are in towns without jobs.

When President Clinton was campaigning for President, he promised loggers in the Northwest that he would broker a compromise

MARCH 30, 1995

VOTE NO. 121

between them and the environmental extremists. After his election, he made a show of carrying through on that pledge with his so-called Option 9 plan. That plan, which is still in effect, will supposedly allow the harvesting of 1.1 billion board feet of timber each year in the Northwest. The Option 9 plan, on its face, accepts as permanent an 80 percent reduction from the former sustainable harvest level; thus, President Clinton's idea of a compromise is that only 80 percent of loggers must lose their jobs. Unfortunately, even this unfair solution is an empty promise. President Clinton did nothing to reduce the number of lawsuits against timber harvests, so even when sales are made (and less than 300 billion board feet were sold in the first year Option 9 was in effect) they are not final until the timber is actually removed. Two factors are slowing its removal--lawsuits, and the fact that President Clinton has sharply cut the number of Forest Service personnel who work in the woods preparing timber sales.

On top of this dismal situation, successive droughts led to enormous wildfires throughout the West last summer. Environmentalists' successful efforts to prevent the removal of even dead or dying timber left an unprecedented amount of combustible material on the ground at the worst possible time. The heat was so intense in some areas that it destroyed the soil structure, which will cause years of delay before the forest can begin to recover. The resulting hydrophobic soils will not percolate water and will cause rainwater to run off the surface in torrents, polluting streams and destroying fish hatcheries. With a totally "natural" forest in areas like Idaho, which have several hundred trees per acre now, we will have only the couple of dozen trees per acre that existed "naturally" before Idaho was settled. In the minds of environmental fanatics, the fires in Colorado, Montana, eastern Washington, eastern Oregon, and parts of northern California were wonderful because they were "natural." Millions of acres were burned, and numerous endangered species which have never been identified may also have perished, but environmental fanatics saw those fires as Mother Nature at her finest because they were not sullied by human involvement.

Consequently, many extremists violently oppose the removal of dead and dying trees from the 4 million acres that burned in the 1994 fires, and, absent any change in current law, they will be able to prevent it with lawsuits. That timber, if sold, will bring in \$400 million to the Treasury, and will lead to lower lumber and paper prices across the country. If it is not removed within two years, it will be worthless, but it will serve as tinder for future conflagrations. Last year, \$1 billion was spent putting out fires on public lands. It makes much more sense to remove the salvage timber, thus lessening the chance of fires and increasing Federal revenues, than it does to leave the timber there, increasing the chance of fires that will destroy the environment and that will cost the Treasury money.

With this background in mind, we invite our colleagues to compare the language in the bill, which was proposed by Senator Gorton, with the language of the Murray amendment. Both ostensibly have the same goals: to expedite salvage timber sales; to release timber sales authorized in 1990 that have been held up in litigation over an endangered species called the marbled murrelet; and to accelerate Option 9 timber sales. For salvage and Option 9 sales, the bill will provide the Administration the authority to prepare sales in conformance with environmental laws, and to limit challenges of those sales to suits alleging that they were arbitrary, capricious, or otherwise not in accordance with the law. Preliminary injunctions and temporary restraining orders will be banned. In contrast, the Murray amendment would speed up the timetables for making some administrative decisions, but would do nothing about the administrative and judicial remedies that are tying up the process. For timber sales that have been held up since 1990 because of the marbled murrelet, both the bill and the Murray amendment would require that alternate timber stands be available for harvesting. However, the Murray amendment would not do anything to prevent endless legal challenges of these sales either.

Not only would the Murray amendment fail to accelerate timber sales, it would actually retard them in two significant ways. First, it would narrow the definition of "salvage timber," which would result in less timber removal and, of course, numerous new lawsuits on the new definition. Second, it would greatly restrict the areas on which salvage timber could be harvested. Both the bill and the Murray amendment would ban harvesting in some areas, including wilderness areas, but the Murray amendment contains additional bans that could be used to halt virtually all salvage operations. For example, an agency designation of an area as roadless, or any bill introduced by a Member to consider an area as wilderness, would be enough to stop any removal of dead or dying timber under the Murray amendment.

The bill language will not require the Administration to make timber salvage sales or to live up to its Option 9 commitments. It merely will make it possible for it to do so, in accordance with environmental laws. Frankly, this language is very mild. We would prefer to require the Administration to make these timber sales. However, the approach in this bill is manifestly better than the approach taken by the Murray amendment, which would just place further restrictions on timber harvesting. We therefore strongly urge the tabling of the Murray amendment.

Those opposing the motion to table contended:

The authorizing language on timber that is in this bill has three goals: to provide for the swift removal of dead and dying timber that resulted from last year's forest fires; to expedite the rate of timber sales under the President's Option 9 timber sales plan in the Pacific Northwest; and to permit timber harvests for so-called section 318 sales, which have been held up since 1990. We agree with these goals. Our only objection is that the language in this bill is so draconian that we fear it will result in endless litigation and no harvests of any timber. Therefore, we have offered the Murray amendment, with exactly the same intent as the language in the underlying bill, but with none of the legal problems.

The Pacific Northwest has been at the center of a war over trees that has taken place in the courtrooms and Congress for almost

a decade. One strategy that has been consistently applied has been to waive environmental laws--that strategy has not worked. Congress has voted to exempt timber sales from those laws 12 times since 1984, yet timber operations on public lands, especially in the Northwest, have dropped astronomically.

It is also a bad idea as a matter of policy. The timber we are talking about is not owned by the loggers, no matter how many generations of them have made their living felling it. The timber we are talking about is on public lands, and is thus owned by all Americans. People in the East, in the South, and all over the country have every right to want to limit tree-cutting on public lands. Few Americans, if they knew of the language in this bill, would support it. Americans strongly support environmental laws. They want to protect endangered species like the spotted owl and the marbled murrelet, and they want to ensure that a natural diversity of tree species is found on public property. If some loggers must lose their jobs to meet these goals, then that is a price that must be borne. They can find new jobs, but if the spotted owl becomes extinct, there will be no bringing it back.

The language in this bill would literally allow as many trees to be harvested as is practicable, without any worry over the environmental costs. The Murray amendment, instead, would not suspend a single law, but it would hurry the timeframes under which decisions pursuant to those laws must be made. This approach would ensure the prompt harvesting of timber, especially of the dead and dying trees from the drought and fires of last year, without harming the environment or leading to a new wave of lawsuits. Clearly this approach is preferable, and should be favored by a majority of Senators.